

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3919 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GANESH VIJAY METAL INDUSTRIES

Versus

RAMNATH RAMPRASHAD

Appearance:

MR MS BAROT for Petitioner
MR ASHISH H SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/12/2000

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the employer has challenged the judgment and award dated 20.2.1989 passed by the Labour Court, Ahmedabad in Reference (LC-IDA-T) No. 1305/84 directing the petitioner-employer to pay the respondent full

backwages from the date of termination till the date of award and also to pay Rs.5,000/- as compensation in lieu of reinstatement.

2. The respondent was employed by the petitioner for rendering services as a Moulder in the factory being run by the petitioner with the help of about 11 employees. There is some dispute about the year in which the respondent joined the petitioner's service. According to the respondent-workman, he had put in about 12-13 years service before his services were terminated in July, 1983 whereas, according to the learned counsel for the petitioner-management, the respondent had put in only about 3 years service. There is, however, nothing on record to substantiate this assertion being made by the learned counsel for the petitioner.

The case of the respondent was that he had gone to his native place in Uttar Pradesh for celebrating his son's marriage and he was granted two months' leave, but he had applied for extension of leave by 2 to 4 months, but the employer did not grant the same and terminated the respondent's service without holding any inquiry and, therefore, the order of termination was penal one in order to punish the respondent for the alleged misconduct of overstaying leave.

3. On the other hand, the case of the petitioner management was that the respondent was remaining absent from 22.4.1983 without obtaining leave. In view of such continued unauthorized absence, the management had written letters dated 7.5.1983 and 4.6.1983 calling upon the respondent to resume duty. Since the respondent did not resume duty, on 16.6.1983 the management sent a money order for an amount of Rs.1020/- by way of retrenchment compensation for a period of three years service put in by the respondent and the respondent was also informed that the respondent's name was being struck off from the muster roll. It is the case of the management that since the respondent did not response to the said letter, on 27.7.1983, the respondent's name was struck off from the muter roll. It is, therefore, submitted that since the respondent himself had abandoned service, there was no need for the petitioner to hold any departmental inquiry and, therefore, there was no infirmity in the order of termination.

4. The dispute raised by the respondent workman was referred to the Labour Court, Ahmedabad before which the petitioner management produced documents being letters dated 7.5.1983 and 4.6.1983 sent by the management to the

respondent and the last intimation dated 22.7.1983. However, the management did not lead any oral evidence. No one stepped in the witness box on behalf of the management to prove the letters in question receipt of which was denied by the respondent workman.

After hearing the learned counsel for the parties, the Labour Court held that the management had sought to terminate the services of the respondent with a view to punish him for remaining absent without leave and, therefore, a departmental inquiry was required to be held and the misconduct alleged against the respondent was required to be proved. However, since that was not done, the termination was illegal. Hence, the Labour Court passed the order for full backwages for the intervening period. However, when it came to the question of reinstatement, the respondent workman had given a purshis that he had already become a sadhu and that, therefore, he was not interested in reinstatement, but he may be awarded compensation in lieu of reinstatement. The Labour Court thereupon passed the award directing the management to pay Rs.5,000/- in lieu of reinstatement over and above the full backwages for the intervening period. That award was passed on 20.2.1989. It is against the said award that the present petition is filed.

5. While admitting the petition, this Court granted interim stay of execution of the award regarding backwages, but the award for compensation of Rs.5,000/in lieu of reinstatement was not stayed. The Court is informed that the petitioner management had already paid the respondent Rs.5,000/-.

6. At the hearing of the petition, the learned counsel for the petitioner management has vehemently challenged the award and submitted that when the respondent himself had abandoned employment, the management was not required to prove anything and that therefore, the Labour Court ought not to have held that the termination of the respondent was illegal. It is further submitted that in any view of the matter, the Labour Court ought not to have awarded backwages or compensation in lieu of reinstatement when the respondent had admittedly become a Sadhu in the meantime.

7. On the other hand, Mr Ashish H Shah, learned counsel for the respondent has vehemently opposed the petition and has submitted that if at all there was any error in the award of the Labour Court, it was against the respondent workman as a higher amount of compensation

ought to have been awarded in lieu of reinstatement and that there is no case for interfering with the award of backwages in this petition under Article 227 of the Constitution.

8. Having heard the learned counsel for the parties, it appears to the Court that no fault can be found with the finding of the Labour Court to the effect that the termination order was illegal because the case of the respondent workman is that he was granted two months' leave for celebrating his son's marriage in his native place in Uttar Pradesh and that he had only overstayed leave by a few weeks. Apart from that if a departmental inquiry were held, all the relevant facts would have been on record. But the management did not lead any oral evidence to prove the documentary evidence being the notices sent to the respondent workman, when the respondent categorically denied receipt of the letters/notices in question.

Even so, the fact remains that once the Labour Court found that the respondent had become a sadhu as per his own admission, the Labour Court ought to have applied its mind and ought to have passed the award for backwages keeping in mind the date when the respondent became a sadhu because the award for backwages is required to be passed not merely because the order of termination is found to be illegal but to compensate for the loss of wages to the workman which principle proceeds on the assumption that the workman was ready and willing to render his services to the employer. The very fact that the respondent showed his unwillingness to be reinstated shows that the respondent was not interested in employment and, therefore, the date when the respondent became a sadhu would be the most relevant date. There is, however, nothing on record to show that date.

9. Hence, in the peculiar facts and circumstances of the case, considering the fact that the respondent had already received a sum of Rs.5,000/- in lieu of reinstatement which order is itself of doubtful validity, instead of directing the respondent to return the said amount to the management, it appears to the Court that the interests of justice will be served if the respondent is awarded only 50% backwages from the date of termination till the date of the award of the Labour Court.

10. In view of the above discussion, the petition is partly allowed. The impugned award dated 20.2.1989 passed by the Special Labour Court, Ahmedabad in

Reference (LC-IDA-T) No. 1305/84 is modified to the extent that in place of the direction for payment of full backwages by the petitioner management to the respondent workman, the following direction is issued :-

The petitioner management shall deposit before the Labour Court the 50% of the backwages for the period between 22.7.1983 to 20.2.1989 within two months from today. If the amount is not deposited within two months, the petitioner management shall pay the respondent interest at the rate of 12% p.a. from today till the date of deposit.

It is clarified that the award for payment of Rs.5,000/- as compensation in lieu of reinstatement is not disturbed. The Court also records the fact that the respondent admits having received the said amount of Rs.5,000/- in the year 1989.

11. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-